

DEPARTMENT OF THE ARMY
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
(SDDC)
200 Stovall Street
Alexandria, VA 22332-0000

SDDC Regulation

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**PROCEDURE FOR DISQUALIFYING AND PLACING
TRANSPORTATION SERVICE PROVIDERS (TSP) IN NON-USE**

Supplementation of this regulation is prohibited. Comments on, and suggested improvements of, this regulation may be submitted to SDJA-F

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1. PURPOSE

This regulation prescribes Military Surface Deployment and Distribution Command Operations Center (SDDC OPS CTR) procedures governing disqualification and non-use of Transportation Service Providers (TSP) (carriers, brokers, freight forwards, logistic providers, etc) to include all modes of transportation and their affiliates contracting with SDDC OPS CTR for transportation of Department of Defense (DOD) sponsored freight and ocean cargo. These procedures will be followed when SDDC OPS CTR takes action to disqualify or place a TSP in immediate non-use or recommends that such action be taken.

2. AUTHORITY

The provisions of this regulation are based on the authority contained in 5 USC 301 and 10 USC 2311 as they relate to DOD transportation provided by qualified TSPs, and DOD Directive

5158.4, United States Transportation Command, January 8, 1993; DOD Directive 4500.9, Transportation and Traffic Management, January 26, 1989; DOD Regulation 4500.9- DOD Regulation 4500.9-R, Part II, Defense Transportation Regulation (Cargo Movement), May 2003. The military and public contracts exceptions of section 553(a)(1)(2) of 5 USC apply to this regulation.

3. POLICY

Pursuant to DOD Directive 4500.9, it is the policy of DOD to obtain transportation services from responsive and responsible TSPs providing satisfactory service to meet the needs of the DOD. Procedures contained herein are designed to ensure that the Government's best interests are served. This regulation is separate from any other authority of Installation Commanders and Installation Transportation Officers (ITO) to take administrative action against TSPs.

4. DEFINITIONS

a. **Affiliate.** Business concerns, organizations, or individuals are considered affiliates if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification, non-use, suspension, debarment, or proposed debarment of a carrier which has the same or similar management, ownership, or principal employees as that TSP.

b. **Transportation Service Provider (TSP).** All references in this regulation to " TSP or carrier" shall include any company or other legal entity offering or providing transportation services to DOD/SDDC OPS CTR.

c. **Carrier Review Board (CRB).** A fact-finding administrative body comprised of voting members having the authority to disqualify a TSP from participation in DOD transportation programs. The CRB affords TSPs an opportunity to present evidence and rebut allegations of inadequate or improper performance or other matters specified in paragraph 6 of this regulation.

d. **Debarment** (FAR § 9.403). The action taken by a debarring official excluding a contractor from Government contracting and Government-approved subcontracting for a specified period. Actions taken under this regulation do not constitute debarment.

e. **Disqualification.** The act by a CRB of excluding a TSP from participating in DOD transportation programs. Reasons for disqualification are found in paragraph 6 below. The disqualification shall normally not exceed a period of 24 months. The CRB's decision shall not limit SDDC OPS CTR's right to recommend the TSP for debarment.

f. **Non-Use.** A Transportation Officer (TO) may place a carrier in non-use for up to 90 days for shipments originating from their activity followed by a 90 day probationary period. If a carrier is placed in non-use at that activity twice within a 12 month period the TO can place a carrier in non-use for up to six consecutive months. The SDDC Operations Center has broader authority to place a carrier in non-use for longer periods of time for multiple origin points.

g. **Immediate Non-Use.** The act of temporarily suspending a TSP from all or specified parts of DOD transportation programs. Immediate, temporary non-use action may be taken when there is an immediate threat to the safety or security of government shipments. Placement in disqualification or nonuse status is to protect the Government's interests. The TSP has the responsibility to demonstrate to SDDC that it is fully capable to safely move DOD freight and meet all DOD requirements. Normally, a CRB hearing will be held within 30 days after the TSP is placed in immediate non-use.

5. GENERAL

The following paragraphs explain SDDC OPS CTR procedures for placing a TSP in immediate non-use or disqualifying TSPs from participating in the transportation of DOD shipments under negotiated agreements, tariffs, tenders of service, spot bid awards, rate and service proposals, commercial bills of lading (BOLs) or government bills of lading (GBLs), service agreements, and similar arrangements. This regulation does not apply to contracts entered into pursuant to the Federal Acquisition Regulation (FAR) unless any such contract or agreement calls for its application. Disqualification or immediate non-use will not apply for longer than necessary to protect the interests of the Government. SDDC OPS CTR may, at its election, continue to honor BOLs, GBLs, rate tenders, or similar transportation arrangements that are in existence at the time the carrier was disqualified or placed in non-use.

6. CAUSES AND CONDITIONS FOR DISQUALIFICATION OR IMMEDIATE NON-USE

a. **Disqualification.** Disqualification action may be taken for specific incidents of unsatisfactory service or failure to perform, or a record or trend of unsatisfactory service or failure to perform in accordance with the terms of negotiated agreements, tariffs, tenders of service, spot bid awards, BOLs or GBLs, service agreements, governing SDDC OPS CTR rules publications, or other similar arrangements. Examples of such failures or violations include, but are not limited to, the following:

- (1) Failure to meet ordered pickup dates for freight shipments.
- (2) Selective refusal to accept freight/shipments.
- (3) Failure to meet time-in-transit standards and/or required delivery dates.
- (4) Mishandling of freight shipments, e.g., damaged or missing transportation seals, improper loading, packing, blocking, or bracing.
- (5) Failure to adequately protect DOD shipment(s) from loss and/or damage.
- (6) Improper routing (as applicable to mode).
- (7) Failure to furnish proper or adequate equipment or facilities.
- (8) Retention of employees who in the performance of DOD-related duties:

- (a) use intemperate, vulgar or abusive language;
 - (b) exhibit evidence of drug or alcohol use; or
 - (c) engage in other offensive conduct.
- (9) Failure to pay just debts or otherwise demonstrate lack of financial responsibility so as to subject government shipments to actual and/or potential delay, frustration, seizure, or detention.
- (10) Failure to settle loss and damage claims promptly.
- (11) Failure to comply with applicable federal, state and local laws and regulations governing the movement of freight.
- (12) Accidents involving DOD hazardous materials shipments, serious injury or fatalities, which indicate a lack of TSP responsibility to perform in a safe manner.
- (13) Use of equipment, facilities, or personnel that fail to meet applicable safety and/or security standards.
- (14) Failure to maintain qualification requirements for doing business with the DOD (e.g. failure to maintain required liability insurance coverage.)
- (15) Failure to respond to a SDDC OPS CTR request for financial data, operational data or other information subject to request under the tender of service or similar agreement.
- (16) Suspension, debarment, or proposed debarment by any federal agency under the authority of Federal Acquisition Regulation (FAR) subpart 9.4 and Defense Federal Acquisition Supplement (DFARS) subpart 209.4.
- (17) Indictment or conviction of a criminal offense indicating a lack of business integrity or honesty that affects the responsibility of the TSP.
- (18) Any other cause or condition of a serious or compelling nature that affects the present responsibility of a TSP providing transportation services to the DOD.

b. Immediate Non-Use. Immediate non-use action may be taken when authorized by the SDDC OPS CTR, Chief, Domestic Surface Distribution Division (for domestic freight TSP), or Chief, International Surface Distribution Division (for ocean carriers) based on operational or administrative deficiencies so severe as to immediately threaten safety or security of DOD shipments.

7. PROCEDURES

- a. On receipt of information or a recommendation from a Transportation Officer,

Port Commander, SDDC representative, service headquarters representative or a Federal agency, the appropriate SDDC OPS CTR office will review the recommendation and related facts to ascertain if a CRB should be convened to determine if disqualification is needed to protect the Government's interests. If it is determined that a CRB should be convened, the appropriate office will, with concurrence of the SDDC Staff Judge Advocate or servicing legal advisor, promptly notify the carrier of such determination. A TSP will not be disqualified without an opportunity for a board hearing in accordance with the procedures set forth in this regulation.

b. SDDC OPS CTR will forward to the TSP a written notice of a CRB hearing, along with a copy of this regulation, by certified mail, express air carrier, or similar means to include electronic transmission with receipt verification. The notice will state:

(1) That the CRB is considering disqualification or non-use action and the reasons therefore.

(2) The date, time, and place the review board will convene.

(3) That the TSP will have 14 calendar days from the date of the notice letter to do the following:

(a) Respond in writing or by telephone to the proposed disqualification or non-use.

(b) Request additional time, if necessary, for presenting information.

(c) Notify SDDC OPS CTR officials concerned of any intent to present information to the CRB in person or by telephone conference.

(d) Submit six copies of all the information it wishes the board to consider.

(4) That failure to respond to a board notice letter will result in the CRB basing its decision upon the material in front of the CRB when it convenes.

(5) If circumstances warrant, the notice may also require the TSP to provide information identifying all affiliates or other relevant documentation.

c. For good cause, SDDC OPS CTR may prescribe a lesser period of time, but not less than seven (7) calendar days, for the TSP to take the actions prescribed above. A TSP may waive the minimum response time and submit a written request that the CRB be convened at the earliest practicable date.

d. Any cause or condition supporting disqualification or non-use which comes to the attention of the board after scheduling a CRB may be joined with the pending CRB if the TSP is provided written notification of the additional allegations, and is provided a minimum of seven (7) calendar days to respond to the additional allegations prior to the commencement of the CRB.

e. If the TSP provides sufficient information and documentation to support settlement of all

allegations, SDDC OPS CTR has the authority to rescind or modify the previous determination to include cancellation of the CRB if deemed in the best interest of the government.

f. SDDC can place a TSP in immediate, temporary non-use upon discovering a TSP's conduct, omission, failure or other circumstances that create a threat or serious concerns about the TSP's ability to safely move and protect DOD freight. Placing a TSP in immediate non-use shall be reserved for those instances where the circumstances require such immediate action to protect the Government's interests. A CRB will normally be convened within 30 days of such non-use, unless action of the TSP causes delay. For good cause, a TSP may request an expedited hearing.

8. COMPOSITION OF REVIEW BOARDS

a. SDDC OPS CTR CRBs will be composed of a chairperson at the level of GS-14 or equivalent military (or higher) and five voting members who shall ordinarily be senior civilians and military at the level of GS-13 or equivalent military (or higher) to ensure its members possess the needed expertise and experience to take actions authorized under this regulation.

b. Surface freight Arms, Ammunition and Explosives (AA&E) CRBs will consist of five voting members who shall be senior military and civilians at the level of GS-14 or designated alternate equivalent (or higher) with the chairperson at the level of Colonel (O-6) or Civilian GS-15 to ensure its members possess the needed expertise and experience to take actions authorized under this regulation.

c. Advisory members (non-voting) of CRBs include legal counsel, action officers and functional experts, as appropriate.

d. **CRB Meetings and Records.** The CRB will meet at the time and place designated by the CRB Chairperson. A CRB recorder will be provided by SDDC OPS CTR and will be responsible for recording the minutes of CRB hearings and keeping necessary records. Records may be summarized and shall be maintained in a loose-leaf binder in chronological order with an alphabetical case index at the front. These case summaries will be maintained by the activity convening the CRB.

(1) **Verbatim Records.** A verbatim record of the CRB hearing may be taken at SDDC OPS CTR's discretion and expense. Normally, it is not the CRB's business practice to record or transcribe board proceedings. If a verbatim record is taken, it will be maintained in the appropriate case file. A copy of the verbatim record shall be provided to the TSP upon request. TSPs may make a verbatim record of the hearing at TSP expense. The TSP shall notify SDDC OPS CTR of its intent to take a verbatim record of the hearing not less than 72 hours prior to the convening of the CRB, eastern standard or day-light savings time, which ever applies.

(2) **Access.** CRBs may consider a TSP's proprietary business information, overall business strategy and business relationship with SDDC, agents and subcontractors. Therefore, CRB hearings shall be closed to all but the following persons:

(a) representative(s) of SDDC or the military service/agency affected;

- (b) representative(s) of the TSP;
- (c) witnesses; and
- (d) any other persons present with the consent of the TSP and SDDC OPS CTR.

Any person not meeting the above criteria must request permission to attend from the CRB Chairperson at least 72 hours prior to the convening of the CRB. The Chairperson has the final approval for any request.

e. Board Determination.

(1) If the TSP fails to respond to the notice letter within fourteen (14) calendar days after its issuance, or any approved extension, the CRB will make a decision based on the information available to the Board when it convenes.

(2) If the TSP presents data within the prescribed time period, the determination of whether to disqualify the TSP will be made at the conclusion of the CRB proceedings, unless the evidence presented requires further investigation, in which case the TSP will be informed of when to expect a determination. However, if the TSP's response to the notice letter provides information sufficient to eliminate the basis for the CRB, the Board Chairperson, in his/her discretion, may cancel the CRB.

(3) The Board, in its discretion, will consider the following factors in making a determination:

(a) Investigative reports provided by such entities as the transportation officer, police, safety officials, safety and security contractors, Defense Security Service, or the Criminal Investigation Command.

(b) TSP's written and oral presentation(s).

(c) TSP's past performance.

(d) Special services provided by the TSP, which may be unavailable elsewhere.

(e) TSP's responsiveness to the Command investigation, and corrective action taken by the TSP to preclude similar incidents of poor performance from recurring, including appropriate disciplinary action against responsible individuals.

(f) Whether the TSP has had adequate time to eliminate the circumstances within the TSP's organization that led to the convening of a CRB.

(g) The financial condition of the TSP and the economic impact of disqualification.

(4) After consideration of all relevant factors, the CRB will make a decision. The CRB

may, by majority vote, decide to:

(a) Allow the TSP to continue participating in the transportation of DOD shipments with or without conditions being imposed to ensure the TSP's compliance with Freight Carrier Registration Program (FCRP) and Carrier Performance Program (CPP) requirements.

(b) Disqualify the TSP for a designated period of time.

(c) Suspend for a stated period of time any part of a disqualification with or without probationary conditions as described in paragraph 8e(5) below.

(5) When the Board imposes disqualification, it may suspend for a stated period of time the execution of all or any part of the disqualification period. This suspension gives the TSP a probationary period during which the TSP can demonstrate that cited deficiencies have been corrected and it is able to satisfactorily transport DOD freight shipments. Additional instances of failure to perform or unsatisfactory service during this probationary period may provide a basis for vacating the suspension. Except when circumstances require otherwise, the TSP will be given seven (7) days to notify their intent to appeal. Notice of proposal to vacate will be sent by certified mail, express air carrier, or similar means with receipt verification. Upon vacation, the entire period of a suspended disqualification will become effective. In addition, incidents causing the vacated suspension may also give rise to a new basis for another CRB proceeding and additional disqualification action.

9. TSP NOTIFICATION OF DISQUALIFICATION DETERMINATION

SDDC OPS CTR will notify the TSP of the CRB decision by certified mail, express air carrier, or similar means with receipt verification. The notice will specify the reasons for the CRB decision and will specifically describe the period of disqualification, if any. The TSP will be notified of the CRB decision in a timely manner, normally within 15 calendar days of the CRB hearing.

10. PERIOD OF DISQUALIFICATION

a. A period of disqualification will begin on the date specified by the Board and will end at 2400 hours on the last day of the period, unless the TSP is sooner reinstated.

b. A TSP disqualified for six months or more is required to re-qualify through the appropriate SDDC OPS CTR Freight Carrier Registration Program (FCRP) prior to regaining its eligibility to participate in DOD transportation programs.

11. APPEAL OF DETERMINATION

a. TSPs may appeal a CRB decision within 15 calendar days from the date of receipt of the CRB decision letter. The decisions of the CRB will be effective while the appeal is pending, except when the appellate authority grants the TSP's written request to stay a decision.

b. An appeal of a SDDC OPS CTR board action should be forwarded to the Deputy Commanding General, SDDC OPS CTR, 661 Sheppard Place, Fort Eustis, VA 23604-1644.

Appeals will be independently reviewed and processed by personnel not substantially involved in the initial CRB decision.

c. The appeal will fully document the reasons for requesting relief, which may include the submission of new material or bona fide change of management. The disqualification period may be terminated, suspended, or reduced upon presentation of evidence that the causes and conditions resulting in the initial disqualification have been eliminated or corrected, or upon the execution of an agreement with the TSP outlining the terms and conditions upon which the original CRB decision is being modified.

d. A determination to grant or deny an appeal will be considered administratively final. The TSP will be promptly notified in writing of the determination.

12. NOTICE TO DOD, OTHER GOVERNMENT AGENCIES AND THE PUBLIC

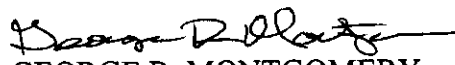
The Board chairperson will notify DOD shippers and Government agencies of any determination to disqualify or place a TSP in immediate non-use status, or to reinstate a TSP, by Defense Messaging System (DMS) messages, customer advisories or certified letters. Action taken against a TSP may be published over the World Wide Web via SDDC's Home Page.

13. REFERRAL TO OTHER AGENCIES

When cause for debarment or suspension action specified in FAR Subpart 9.4 is present SDDC will refer all matters appropriate for consideration by the agency debarring and suspending official in accordance with the Army Federal Acquisition Supplement, part 5109.

FOR THE COMMANDER:

OFFICIAL:


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